

Tax Type: **PROPERTY TAX**
Issue: **Religious Ownership/Use**

HILLSBORO FREE)	Docket #	97-68-10
METHODIST CHURCH)	A.H. Docket #	98-PT-0041
Applicant)		
)	Parcel Index #	08-100-219-06
v.)		
)	Barbara S. Rowe	
THE DEPARTMENT OF REVENUE)	Administrative Law Judge	
OF THE STATE OF ILLINOIS)		

The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1997 assessment year; secondly, whether the applicant is a religious organization; and lastly, whether this parcel was used by the applicant for exempt purposes during the 1997 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned this parcel during a portion of the 1997 year. It is also determined that the applicant is a religious organization. Finally, it is determined that the applicant did not use the subject parcel for religious purposes during the portion of the 1997 assessment year that it owned the property.

Findings of Fact:

1. The jurisdiction and position of the Department that Montgomery County Parcel Index No. 08-100-219-06 did not qualify for a property tax exemption for the 1997 assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 5. (Tr. p. 10)

2. On February 23, 1998, the Department received a property tax exemption application from the Montgomery County Board of Review for Permanent Parcel Index No. 08-100-219-06. The applicant had submitted the request and the board recommended granting a partial year exemption from March 26, 1997, through December 31, 1997, of the assessment year. The Department assigned Docket No. 97-68-10 to the application. (Dept. Grp. Ex. No. 2)

3. On April 16, 1998, the Department denied the requested exemption application, finding that the property was not in exempt use. (Dept. Ex. No. 3)

4. The applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing convened at the Department's offices in Springfield, Illinois, on September 1, 1998, was held pursuant to that request. (Dept. Ex. No. 5)

6. The applicant acquired the subject parcel by a warranty deed dated March 26, 1997. The subject parcel is adjacent to and North of the applicant's church. (Dept. Ex. No. 2 pp. 3-4, 10; Applicant's Ex. No. 1)

7. The applicant purchased the parcel at issue to be used for additional church parking. As of April 1, 1998, the land was still an empty lot. (Dept. Ex. No. 2 pp. 5-7; Tr. pp. 12-15)

8. During 1997, the applicant used the subject parcel for recreational, social, and fellowship programs. A church Sunday school picnic was held on the parcel. The applicant gained no income from the property and spent money weekly to have the parcel mowed. (Dept. Ex. No. 4; Tr. p. 11-15, 17-18)

9. The applicant has approximately 125 members. An average of 175 people attend

the worship services weekly. (Tr. p. 15)

10. I take administrative notice of the fact that the Department granted the applicant an exemption for its church building and related ground pursuant to Docket No. 95-68-20. The parcel is 7.14 acres. (Dept. Ex. No. 2 p. 9)

11. The applicant has expansion plans for the 7.14 acres that were exempted in Docket No. 95-68-20. It plans to develop a Christian education wing with a family life center and gymnasium in that area. (Tr. p. 16)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the authority granted by the Constitution, the legislature has enacted exemptions from property tax. At issue is the religious exemption found at 35 **ILCS** 200/15-40. That portion of the statutes exempts certain property from taxation in part as follows:

§ 15-40. Religious purposes, orphanages or school and religious purposes. All property used exclusively for religious purposes, or used exclusively for school and religious purposes, . . . and not leased or otherwise used with a view to profit, is exempt,

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel.

Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967) It is therefore clear that the burden of proof is on the applicant to establish that it used the parcel for exempt purposes.

The applicant intends to use the subject parcel as a parking lot. At 35 ILCS 200/15-125 is found the exemption that states that:

Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or charitable institution which meets the qualifications for exemption, are exempt.

A religious purpose pursuant to the constitutional provision concerning exemption from taxation is a use of the property by a religious society or organization as a place for worship, Sunday school, or religious instruction. People ex. rel. McCullough v. Deutsche Gemeinde, 249 Ill. 132 (1911). In that case the Illinois Supreme Court stated:

Unless facts are stated from which it can be seen that the use is religious or a school use in the sense in which the term is used in the constitution the application should be denied. The words used in the constitution are to be taken in their ordinary acceptation and under the rule of strict construction, which excludes all purposes not within the contemplation of the framers of that instrument. While religion, in its broadest sense, includes all forms and phases of belief in existence of superior beings capable of exercising power over the human race, yet in the common understanding and in its application to the people of this State it means the formal recognition of God as members of societies and associations. As applied to the uses of property, a religious purpose means a use of such property by a religious society or body of persons as a stated place for public worship, Sunday schools and religious instruction. *Id.* at 136-137.

To qualify for exemption, a property must in fact be used for religious purposes. The Illinois Appellate Court found that a church owned building which was not used for any purpose and was boarded up during the taxable years in question did not qualify for a property tax exemption for those years. Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1st Dist. 1983)

In the case of People ex. rel. Pearsall v. The Catholic Bishop of Chicago, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that a property was intended to be used for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must have begun for

the property to be exempt.

I find that the applicant intends to use the subject parcel for a parking lot, but that use has not begun. I find that the use by the applicant of the subject parcel for recreational and social functions associated with the applicant's church clearly do not establish religious usage as contemplated by the statute and described in People ex. rel. McCullough v. Deutsche Gemeinde, *supra*.

It is therefore recommended that Montgomery County Parcel Index No. 08-100-219-06 remain on the tax rolls for the period of March 26, 1997, through December 31, 1997, the period of time that the applicant owned the parcel in question.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
March 23, 1999